

Decision Notice



Decision 235/2011 Mr Allan Milligan and Glasgow City Council

Whether requests are vexatious

Reference No: 201101784

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Scottish Information Commissioner

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Summary

Mr Allan Milligan asked Glasgow City Council (the Council) for information relating to outstanding penalty charge notices and details of specified pay and display bays. The Council refused to comply with Mr Milligan's requests, having judged them to be vexatious. Mr Milligan requested a review of this decision, but the Council informed him that it would not comply with these requests (under section 21(8) of FOISA) on the basis that the initial requests were vexatious. Mr Milligan subsequently applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Mr Milligan's requests in accordance with Part 1 of FOISA, and was entitled to treat Mr Milligan's requests as vexatious, in terms of section 14(1) of FOISA.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 14(1) (Vexatious or repeated requests) and 21(1), (8) and (9) (Review by Scottish public authority)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 8 November 2010, Mr Milligan wrote to the Council requesting that it provide copies of all penalty charge notices [relating to parking in a marked parking bay] claimed to be outstanding and for which he was deemed liable, over a specified period (request 1).
2. On the same date, Mr Milligan wrote to the Council making two further requests within a single letter. These sought:
 - the contemporaneous notes taken by a parking attendant present at a particular incident (request 2) and
 - details of and plate number of certain pay and display bays (as prescribed in the Traffic Signs Regulations and General Directions 2002) (request 3).



3. The Council did not provide any response to the requests detailed above. On 18 January 2011 (in relation to request 1) and 28 December 2010 (in relation to requests 2 and 3), Mr Milligan wrote to the Council requesting reviews of its handling of his requests, and asking again that the information be supplied to him.
4. Mr Milligan did not receive any response to either of his requests for review. On 11 March 2011, he wrote to the Commissioner, stating that he was dissatisfied with that failure in relation to requests 2 and 3 and applying for a decision in terms of section 47(1) of FOISA.
5. On 15 March 2011, Mr Milligan wrote to the Commissioner, stating that he was dissatisfied also with the Council's failure to respond to request 1, and applying for a decision in terms of section 47(1) of FOISA.
6. These applications were the subject of *Decision 107/2011 Allan Milligan and Glasgow City Council*. In that decision, the Commissioner required the Council to provide a response to Mr Milligan's requirements for review, either (a) by conducting reviews in relation to Mr Milligan's requirements for review in terms of section 21(4)(c) of FOISA and notifying him of the outcome in terms of section 21(5) or, (b) by giving notice in terms of section 21(9) of FOISA that it had determined (in line with section 21(8)) that it was not required to conduct the reviews.
7. On 5 August 2011 (in two separate letters), the Council wrote to Mr Milligan advising him that it had decided not to conduct reviews. The Council stated that his requests for information were substantially the same as previous requests and that it considered his correspondence imposed a significant burden on the Council.
8. On 27 September 2011, Mr Milligan wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr Milligan's application only relates to requests 1 and 3 above; in the interim, the Council had supplied him with information that fulfilled the terms of request 2.
9. The application was validated by establishing that Mr Milligan had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

10. The investigating officer subsequently contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to explain why it did not consider it was obliged to comply with Mr Milligan's requirements for review.



11. The Council responded on 4 November 2011 providing its submissions on why it considered Mr Milligan's requests to be vexatious in terms of section 14(1) of FOISA and why it considered it was not therefore obliged to respond to his requirements for review.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr Milligan and the Council and is satisfied that no matter of relevance has been overlooked.

Section 21(8)(b) of FOISA

13. As noted above, on 5 August 2011, the Council advised Mr Milligan that, in terms of section 21(8)(b) of FOISA, it had decided not to carry out reviews of the way in which it had dealt with his requests. Section 21(8)(b) states that a Scottish public authority is not obliged to comply with a requirement for review if the information request to which the requirement relates was one which, by virtue of section 14, the authority was not obliged to comply.
14. The Commissioner must therefore decide whether Mr Milligan's requests of 8 November 2010 were requests with which the Council was not obliged to comply, by virtue of section 14 of FOISA, in order to ascertain whether the Council complied with section 21 of FOISA in dealing with Mr Milligan's requirements for review.

Section 14(1) of FOISA

15. Section 14(1) of FOISA states that section 1(1) (which confers the general entitlement to information held by such authorities) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious. Section 14 does not provide an exemption as such; instead, its effect is to render inapplicable the general right of access to information contained in section 1(1) of FOISA.

The Council's submissions

16. The Council explained that it had received numerous pieces of correspondence from Mr Milligan over the last three years, stemming from the Council's administration of parking charges within a restricted parking zone. The Council indicated that it was hard to be precise as to exactly how many letters it had received from Mr Milligan as these had been sent to numerous departments and recipients within the Council



17. The Council submitted that the requests from Mr Milligan, when considered together, imposed a significant burden on the Council. It considered that it was reasonable and relevant to consider the wider context in which the requests for information were made. It considered the requests were part of a series of communications from Mr Milligan in relation to parking matters that the Council believed had been appropriately dealt with in previous correspondence. When looking at this matter, the Council stated it had taken into account the content of the correspondence (which it considered to be often lengthy and confusing) and the amount of correspondence that Mr Milligan has sent.
18. The Council also argued that Mr Milligan's requests for information did not have a serious purpose when considered alongside his previous correspondence on parking related matters. It suggested that, instead of taking cognisance of information and explanations provided in relation to parking matters, Mr Milligan instead chose to reiterate previous requests for information.
19. Additionally, the Council submitted that these requests for information, when considered alongside previous requests were designed to cause disruption to it and that Mr Milligan was attempting to disrupt the Council's efficient administration of parking enforcement.
20. Finally, the Council submitted that, when considering the requests in the wider context of all the correspondence received from Mr Milligan, it believed the requests were a form of harassment. The Council referred to specific previous correspondence that it had received from Mr Milligan in relation to parking matters and considered that continued correspondence of the same nature comprised harassment.

Mr Milligan's submissions

21. In his submissions, Mr Milligan referred to previous correspondence that he had received from the Council and to submissions that the Council had made to the Scottish Parking Appeals Service.
22. Mr Milligan indicated that he believed the Council had failed to respond to his request for details of outstanding penalty charge notices for which he was deemed liable, although he noted that the Council had advised him of the number outstanding. Mr Milligan also stated that he believed he was entitled to the assurance that the Council had complied with legislation in the installation of traffic signs. Additionally, Mr Milligan did not consider the Council had ever provided him with the information he sought concerning a pay and display bay.
23. Mr Milligan refuted the Council's claim that his requests were vexatious, stating that he did not understand the stance taken by the Council in refusing his requests which he believed would provide qualification to its statements, providence to its claims and substance to its allegations made. He considered he was only demanding that the Council provide him with information to which he was legally entitled.



The Commissioner's view

24. The Commissioner has published guidance on the application of section 14(1) of FOISA¹. This states:
- “There is no definition of “vexatious” in FOISA. The Scottish Parliament acknowledged that the term “vexatious” was well-established in law and opted to give the Commissioner latitude to interpret that term in accordance with this background, in order that the interpretation might evolve over time in light of experience and precedent.”
25. The Commissioner's general approach (set out in his guidance on section 14) is that a request (which may be a single request, the latest in a series of requests, or one among a large number of individual requests) will be vexatious where it would impose a significant burden on the public authority and one or more of the following conditions can be met:
- it does not have a serious purpose or value; and/or
 - it is designed to cause disruption or annoyance to the public authority; and/or
 - it has the effect of harassing the public authority; and/or
 - it would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
26. As recognised in *Decision 108/2010 Mr Mark Irvine and South Lanarkshire Council*², the Commissioner's general approach to the question of whether a request is vexatious is that it will impose a significant burden on the public authority. This does not exclude the possibility that, in any given case, one or more of the other listed criteria may be of such overwhelming significance that it would be appropriate to consider the request vexatious in the absence of significant burden.
27. In the Commissioner's briefing on section 14 of FOISA, he has indicated that a request will impose a significant burden on a public authority where dealing with it would require a disproportionate amount of time and the diversion of an unreasonable proportion of its financial and human resources away from its core operations.
28. The Commissioner recognises that Mr Milligan's requests of 8 November 2010 might not appear to be vexatious, when viewed in isolation and in the context of the explanation provided by Mr Milligan (see paragraphs 21 to 23 above). However, the Commissioner is aware that, in some cases, the vexatious nature of a request will only emerge after considering the request within its context; for example, in relation to previous or ongoing correspondence with the applicant (as argued by the Council in relation to this case).

¹ <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Section14Overview.asp>

² <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2010/201000367.asp>



Whether the requests imposed a significant burden

29. The Commissioner has considered carefully the submissions and supporting information provided by the Council, which were intended to show that the requests made by Mr Milligan were part of a correspondence which had imposed a significant burden on the Council.
30. While not all of the correspondence consisted of information requests to the Council, it is clear that it all related to parking matters and, in particular, disputes about the Council's enforcement of parking regulations. As noted above, the Council argued that it was reasonable and relevant to consider the wider context in which the requests for information were made and the volume and content of the correspondence.
31. The Commissioner finds that the Council has provided sufficient evidence to show that Mr Milligan's requests, particularly when viewed in the context of, and as a continuation of previous correspondence between him and the Council on parking matters had become a significant burden.

Whether other "vexatious" factors were also in evidence

32. The Commissioner will now consider whether any of the other factors listed in his guidance on section 14 (see paragraph 25 above) can be identified in this case: in other words, whether it could be shown that Mr Milligan's requests lacked serious purpose or value; were designed to cause disruption or annoyance to the Council; had the effect of harassing the Council; and/or would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
33. Having considered all of the submissions provided by the Council and Mr Milligan, the Commissioner accepts that it was reasonable in the circumstances for the Council to conclude that the information request process under FOISA was being used by Mr Milligan to continue extended dialogue in relation to his complaints against the Council, which the Council considers have been fully addressed. The Commissioner notes that the Council has addressed similar matters in previous correspondence with Mr Milligan. The Commissioner also notes that there is an independent process for challenging the Council's enforcement of parking restrictions.
34. In all the circumstances, the Commissioner accepts that Mr Milligan's requests were part of a course of correspondence that had the effect of harassing the Council and, in view of its volume and frequency, had become unreasonably burdensome for the Council and was, in consequence, disproportionate.
35. The Commissioner has therefore found that the Council was not obliged to comply with Mr Milligan's information requests of 8 November 2010, on the grounds that they were vexatious in terms of section 14(1) of FOISA. Accordingly, under section 21(8)(b) of FOISA, the Council was not obliged to comply with Mr Milligan's requirements for review.



DECISION

The Commissioner finds that Glasgow City Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in refusing to comply with Mr Milligan's requests for information on the basis that the requests were vexatious in terms of section 14(1).

Appeal

Should either Mr Milligan or the Council wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

Margaret Keyse
Head of Enforcement
23 November 2011



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

14 Vexatious or repeated requests

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if-

- (a) the requirement is vexatious; or
- (b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.



- (9) Where the authority considers that paragraph (a) or (b) of subsection (8) applies, it must give the applicant who made the requirement for review notice in writing, within the time allowed by subsection (1) for complying with that requirement, that it so claims.

...